IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

OP.No. 10177 of 2002(J)

PETITIONER:

SUDARSAN CHITS (INDIA) LTD.,
DIVISIONAL OFFICE: 39/754 C.,SECOND FLOOR,
P.O.BOX NO.1127, KARIKKAMURI CROSS ROAD,
COCHIN 682 011, REPRESENTED BY ITS ASSISTANT
DIVISIONAL MANAGER, K.PARAMESWARAN PILLAI.

BY ADV. SMT.SUMATHY DANDAPANI

RESPONDENT:

THE REGIONAL TRANSPORT OFFICER,
(TAXATION OFFICER) ERNAKULAM.

BY SR. GOVERNMENT PLEADER SRI. P.K.RAVIKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.10177/2002 J

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF PAGE 1 OF REGISTRATION CERTIFICATE OF VEHICLE, KL-7/Z 8688.**

EXT.P2; **COPY OF PAGE 7 OF .....DO....DO.....**

EXT.P3: **COPY OF PAGE 9 OF .....DO....DO.....**

RESPONDENT'S ANNEXURE:

ANNEXURE R(A): **COPY OF CIRCULAR NO.7/2000 DTD. 18/05/2000.**

/TRUE COPY/

KSS

S.SIRI JAGAN, J.

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O.P.No.10177 of 2002

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Dated this the 8th day of March, 2007

J U D G M E N T

The petitioner in this original petition is Sudarsan Chits (India) Ltd, which owns an omnibus registered as No.KL-7/Z 8688. The petitioner was paying tax payable under the Kerala Motor Vehicles Taxation Act in respect of the vehicle as applicable to omnibus. However, when the petitioner wanted to remit tax for the quarter ending 31.3.2003, the petitioner was informed that the classification of the vehicle has to be altered and the tax was refused to be collected by endorsing in page 9 of the registration certificate to the effect, "obtain class alteration". In the above circumstances, the petitioner approached this court seeking the following reliefs:

> "(i) issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent to collect the tax of Rs.1960/- for

the period commencing from 1.4.2002 upto 31.3.2003 and make necessary endorsement in the Registration Certificate pertains to the vehicle KL-7/Z 8688, forthwith, without collecting any additional tax for the delay,

(ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent not to insist the petitioner for altering the class of vehicle, KL-7-Z 8688.

(iii) stay all further proceedings in pursuance of the endorsement made at page 9 of the Registration Certificate of vehicle, KL-7Z 8688, pending disposal of the original petition."

2. The State has filed a statement in which it is stated that the petitioner's vehicle was registered as an omnibus for private use in the name of the petitioner company with a sitting capacity of 8 in all and tax endorsement issued at the rate of omnibus for private use. Subsequently the Transport Commissioner, Thiruvananthapuram issued circular No.7/2000 whereby earlier circulars were modified and it was directed that the vehicles registered in the name of the companies or institutions come under the category of transport vehicle as per Section 2(47) read with 2(33) of the Motor Vehicles Taxation Act. It is under the said circumstances that the respondent directed the

petitioner to apply for private service vehicle permit and remit tax at the rate applicable to private service vehicle. An identical issue arose for consideration of this court in O.P.No.16416/2001, in which a learned Single Judge has held as follows:

> "Challenge is against Exts.P2 and P3. Ext.P2 provides that any vehicle with seating capacity of 6 to 12 passengers plus driver if owned by companies, or institutions or the Government and used exclusively for private purpose connected with the said establishment shall be categorised as non-transport vehicles. Ext.P3 provides that such vehicle if registered in the name of Company shall be "allowed under the category of Transport vehicle only as per Section 2(47) read with Section 2(33) of the Motor Vehicles Act". Petitioner submits that this is contrary to Ext.P4 notification, in so far as under the head non-transport vehicle omnibus for private use is permissible. Therefore, the petitioner submits that he shall be allowed to change the registration of his vehicle as omnibus for private use without insisting for applying for PSV permit and to remit tax accordingly. The petitioner further submits that the vehicle is his private vehicle used for his private use and not under the name of the Company.
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> 2. If it is so, there may not be much difficulty. But the registration certificate Ext.P1 shows that it is not registered in the name of the petitioner as a private person but it is registered in the name of the petitioner as Managing Director of a company and therefore, the Company is the owner. This is clear from the registration particulars, ie. name of the registered owner is given as M.A.Nazeer. Description of the person should be shown in the next line of Ext.P1 and it is given as the Managing Director, Sumi Merchantile Company Ltd. If the vehicle was owned privately, naturally the name of his father would be shown. This itself shows that the vehicle is

owned by the Company of which the petitioner is the Managing Director. Necessarily he cannot get a direction for conversion of the registration without insisting to apply for PSV permit. Exts.P2 and P3 in such circumstances, cannot be said to offend Ext.P4.

3. Since the facts in this original petition are identical to those in the said original petition and I fully agree with the view taken by the learned Single Judge, following the said decision, this original petition is dismissed.

Interlocutory application stands closed.

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.No.10177 of 2002

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J U D G M E N T

8th March, 2007